

1 Honorable Christopher M. Alston  
2 Chapter 13  
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8 UNITED STATES BANKRUPTCY COURT  
9 WESTERN DISTRICT OF WASHINGTON AT SEATTLE

10 IN RE:

11 MILFORD OTHELLO MUHAMMAD and  
12 VERNITA MARIE ROBINSON,

13 Debtors.

14 MILFORD OTHELLO MUHAMMAD and  
15 VERNITA MARIE ROBINSON,

16 Plaintiffs,

17 v.

18 US BANK NATIONAL ASSOCIATION, not in  
19 its individual capacity but solely as Trustee  
20 for the RMCA Trust, Series 2013 3-T; and  
MTC FINANCIAL, INC. a Washington  
corporation;

21 Defendants.

22 CASE NO. 15-16261-CMA

23 Chapter 13

24 Adv. Proc. No. \_\_\_\_\_

25 ADVERSARY COMPLAINT  
SEEKING QUIET TITLE TO  
REAL PROPERTY AS TO  
LENDER'S DEED OF TRUST AND  
FOR DECLARATORY AND OTHER  
RELIEF

26 ADVERSARY COMPLAINT SEEKING QUIET TITLE TO REAL PROPERTY AS

27 TO LENDER'S DEED OF TRUST AND FOR DECLARATORY AND OTHER RELIEF

COMPLAINT TO QUIET TITLE  
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## **Plaintiffs.**

1. The Plaintiffs are the Debtors, Milford Othello Muhammad and Vernita Marie Robinson, husband and wife (collectively, the "Robinsons").

**Defendants.**

2. The Defendants are as follows:

- a. US Bank National Association ("US Bank"), a national banking association, not in its individual capacity, but solely as Trustee for the RMCA Trust, Series 2013 3-T; and
  - b. MTC Financial, Inc., ("MTC Financial"), a Washington corporation.

### **Jurisdiction.**

3. The Bankruptcy Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 1334 and 157. This adversary proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue for this adversary proceeding is proper pursuant to 28 U.S.C. § 1409(a).

4. On 22 October 2015 ("Petition Date"), the Debtors filed a voluntary petition commencing a case (the "Bankruptcy Case") under Chapter 13 of the Bankruptcy Code. K. Michael Fitzgerald has been appointed as Trustee and the Debtors remain as debtors in possession in the Bankruptcy Case.

## Real Property.

5. The real property (the "Real Property") that is the subject of this lawsuit is commonly known as 10037 19<sup>th</sup> Avenue Southwest, Seattle, WA 98146 and legally described as follows:

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1                   Lots 33 and 34, and the North 5 feet of Lot 32, Block 2, Regal  
2                   Heights Addition, according to the plat thereof recorded in  
3                   Volume 20 of Plats, page 94, in King County, Washington.

- 4
- 5         6. The Robinsons purchased the Real Property in 1998 and have lived there  
6                   continuously since they purchased that Property.

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8         **2007 Note and Deed of Trust.**

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- 10         7. Prior to the Petition Date, on or about 26 February 2007, the Robinsons executed  
11                   a promissory note (the "Note") in the original face amount of \$285,000, secured  
12                   by a Deed of Trust (the "Deed of Trust") in favor of MERS, as Beneficiary, against  
13                   the Robinsons' Real Property. Copies of the Note and Deed of Trust are attached  
14                   as Exhibits A and B hereto, respectively. The Deed of Trust was recorded under  
15                   King County Recording No. 20070226000405. The Robinsons have never made  
16                   any payment on the Note since they executed the Note and have been in default  
17                   since the first payment was due.

18         **2008 Assignment of Note and Deed of Trust to Property Asset Management, Inc.**

- 19
- 20         8. On 17 March 2008, MERS assigned the Note and Deed of Trust to Property Asset  
21                   Management, Inc. by an assignment recorded under King County Recording No.  
22                   20080910000913, a copy of which is attached as Exhibit C.

23         **2008 Appointment of Northwest Trustee Services, Inc. as Trustee.**

- 24
- 25         9. On 10 September 2008, Property Asset Management, Inc. appointed Northwest  
26                   Trustee Services, Inc. ("Northwest") as Trustee under the Deed of Trust by an  
27                   Appointment recorded under King County Recording No. 20080910000914, a  
copy of which is attached as Exhibit D.

1           **2009 Foreclosure by Northwest.**

2       10. Northwest then commenced a foreclosure on the Robinsons. On 1 July 2009,  
3           Northwest recorded a Notice of Trustee's Sale under King County Recording No.  
4           20090701001269, a copy of which is attached as Exhibit E. This Notice of  
5           Trustee's Sale set a foreclosure sale date for 2 October 2009, which is more than  
6           six years ago. The Notice of Trustee's Sale was in the customary statutory form  
7           and contained this language in Paragraph V:  
8

9           The sale may be terminated any time after 09/21/09 (11  
10          days before the date date), and before the sale by the  
11          Borrower, Grantor, any Guarantor or the holder of any  
12          recorded junior lien or encumbrance paying the entire  
13          balance of principal and interest secured by the Deed of  
14          Trust, plus costs, fees, and advances, if any made  
15          pursuant to the terms of the obligation and/or Deed of  
16          Trust.

17       11. This statutory language effectively accelerated the debt as of 22 September  
18           2009.

19           **2011 Termination of Foreclosure Sale.**

20       12. Northwest did not hold this scheduled sale on 2 October 2009, and eventually  
21           terminated the sale on 8 September 2011 by recording a Notice of  
22           Discontinuance under King County Recording No. 20110912000719, a copy is  
23           attached as Exhibit F.

24           **Other Events Accelerating the Note.**

25       13. Upon information and belief, other actions were taken by US Bank or its  
26           predecessors that likewise accelerated the Note.

27           **Assignment to US Bank.**

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1       14. On or about 28 November 2012, the Note and Deed of Trust were assigned to  
2       US Bank by an assignment recorded under King County Recording No.  
3       20130627000471, a copy of which is attached as Exhibit G. Upon information or  
4       belief, US Bank is the owner and holder of the beneficial interest in the Note and  
5       Deed of Trust.

6

**2014 Appointment of MTC Financial as Trustee.**

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8       15. On 10 December 2014, US Bank appointed MTC Financial as Trustee under the  
9       Deed of Trust by an Appointment of Successor Trustee recorded under King  
10      County Recording No. 20141210002427, a copy of which is attached as Exhibit  
11      H.

12

**Foreclosure by MTC Financial.**

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14      16. MTC Financial commenced a nonjudicial foreclosure on the Robinsons by  
15      recording a Notice of Trustee's Sale under King County Recording No.  
16      20150622001639, a copy of which is attached as Exhibit I. However, US Bank  
17      failed to follow the requirements of RCW 61.24.031 prior to sending out the Notice  
18      of Default and failed to mediate with the Robinsons as required by RCW  
19      61.24.163, despite efforts by the Robinsons to mediate. US Bank's foreclosure  
20      is improper and should not go forward until those statutory requirements are met.  
21  
22      MTC Financial set a Trustee's sale date for 23 October 2015. Shortly prior to the  
23      sale date, the Robinsons filed this Chapter 13 proceeding in Bankruptcy Court.

24

**Statute of Limitations Has Passed.**

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26      17. The statute of limitations for collection of a note secured by a deed of trust is six  
27      years per RCW 4.16.040. The Note was accelerated by the 2009 foreclosure no

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1 later than 22 September 2009. More than six years has passed since 22  
2 September 2009, so the statute of limitations to collect the Note and Deed of  
3 Trust has passed.

4 **The Deed of Trust is Outlawed.**

5 18. Pursuant to RCW 7.28.300, the Deed of Trust is outlawed because the statute of  
6 limitations has passed. RCW 7.28.300 reads as follows:

7 Quieting title against outlawed mortgage or deed of trust.

8 The record owner of real estate may maintain an action to  
9 quiet title against the lien of a mortgage or deed of trust on the  
10 real estate where an action to foreclose such mortgage or  
11 deed of trust would be barred by the statute of limitations, and,  
12 upon proof sufficient to satisfy the court, may have judgment  
quieting title against such a lien.

13 **Judgment Quietting Title and Declaratory Judgement That Note Cannot Be**  
**Collected and Order of Permanent Injunction.**

14 19. Judgment should be entered quieting title to the Real Property in Plaintiffs as  
15 against US Bank and anyone claiming by, through or under US Bank. Similarly,  
16 a declaratory judgment should be entered against US Bank and MTC Financial  
17 adjudicating that the Note cannot be collected and permanently enjoining them  
18 from taking any action to collect the Note and/or foreclose the Deed of Trust.

19 **Attorney's Fees and Costs.**

20 20. The Note and Deed of Trust contain clauses providing for reasonable attorney's  
21 fees and costs. Under Washington's reciprocity statute, RCW 4.84.330, Plaintiffs  
22 are entitled to their reasonable attorney's fees and costs.

23 **Consumer Protection Act Violations.**

24 21. Defendants' violations of RCW 61.24.031 and 61.24.163 are violations of the

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1 Consumer Protection Act under RCW 61.24.135(2). Plaintiffs are entitled to  
2 damages and costs and reasonable attorney's fees per RCW 19.86.

3 **PRAYER FOR RELIEF**  
4

5 WHEREFORE plaintiffs pray the Court as follows:  
6

- 7 a. For a judgment quieting title in Plaintiffs to the Real Property as against US  
Bank and anyone claiming by, though or under US Bank;
- 8 b. For a judgment adjudicating that the Note cannot be collected;
- 9 c. For an injunction enjoining US Bank and MTC Financial from foreclosing the  
Deed of Trust;
- 10 d. For a judgment for Plaintiffs' reasonable costs and attorney's fees which are  
allowed under the Note and Deed of Trust;
- 11 e. For damages, costs and attorney's fees under RCW 19.86;
- 12 f. For a judgment that Defendants foreclosure is invalid and an injunction  
enjoining Defendants from further action to foreclose until Defendants  
comply with RCW 61.24.031 and 61.24.163; and
- 13 g. For such other relief as the Court deems just.

14  
15 DATED this 8th day of February 2016.  
16

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18

19 By

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BY \_\_\_\_\_

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## LIST OF EXHIBITS

- Exhibit A: Note
- Exhibit B: Deed of Trust No. 20070226000405
- Exhibit C: Assignment of Deed of Trust No. 20080910000913
- Exhibit D: Appointment of Successor Trustee No. 20080910000914
- Exhibit E: Notice of Trustee's Sale No. 20090701001269
- Exhibit F: Notice of Discontinuance No. 20110912000719
- Exhibit G: Assignment of Deed of Trust No. 20130627000471
- Exhibit H: Appointment of Successor Trustee No. 20141210002427
- Exhibit I: Notice of Trustee's Sale No. 20150622001639

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